

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1389

SECURITIES & EXCHANGE COMMISSION,

Plaintiff - Appellee,

versus

CHARLES ZANDFORD,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Andre M. Davis, District Judge. (CA-95-2826-AMD)

Submitted: October 22, 2004

Decided: December 3, 2004

Before WILKINSON, MICHAEL, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Charles Zandford, Appellant Pro Se. Susan Sholar McDonald, Jacob H. Stillman, SECURITIES & EXCHANGE COMMISSION, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Charles Zandford appeals the district court's order granting the Securities and Exchange Commission's ("SEC") motion to reinstate a partial grant of summary judgment following a remand from the Supreme Court in SEC v. Zandford, 535 U.S. 813, 825 (2002).

Following remand from the Supreme Court, the SEC filed a motion to reinstate the district court's order granting partial summary judgment to it. Zandford filed an opposition to that motion, but failed to assert any substantive argument establishing a material fact in dispute. Additionally, Zandford refused to make such arguments at a telephonic status conference held by the district court. When offered the opportunity to present argument, in fact, he abruptly terminated the call. Zandford asserts that there is a genuine issue of fact for the first time on appeal to this court. However, because Zandford refused to make these arguments in the district court, despite encouragement from the court to do so, Zandford failed to meet his burden in opposition to summary judgment, Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986), and ultimately waived his right to appellate review, Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993) (stating that issues raised for the first time on appeal generally will not be considered absent plain error or a fundamental miscarriage of justice).

Accordingly, although we grant Zandford's motion to supplement the record on appeal, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED